in Kuching. The appellant did not go to sleep. They did what they could and they wrote to the Registrar, High Court, Singapore, requesting for information regarding the outcome of the service on August 15, 1979, September 2, 1979, October 2, 1979 and October 15, 1979. This is not a case like *The "NIMROD"*(3) (which is relied on by the respondents both before the learned Chief Justice and this court) where the court decided that a judge should not lend assistance to plaintiffs who had negligently left the service of the writ until the last minute. The appellants cannot be said to have been negligent at all.

For these reasons we allowed the appeal.

Appeal allowed.

Solicitors: *Godwin & Co.; Drew & Napier.*

TAN KAI MEE v. LIM SOEI JIN

[A.C.J. (Sinnathuray J.) September 24, 1980]
[Singapore — District Court Appeal No. 88 of 1979]

Family Law — Husband and wife — Maintenance — Deed of separation — Clause "wife shall not at any time apply to court to vary the maintenance order" — Bad in law and against public policy — Women's Charter (Cap. 47).

One of the grounds of appeal in this case was that the learned Magistrate should have given effect to a clause in the Deed of Separation which provided that the respondent/wife shall not at any time apply to the courts to vary the maintenance order.

Held: the clause was bad in law because it was not within the province of the parties to contract out of the Women's Charter. It was also bad in law because such a clause would be contrary to public policy, for the parties to contract to oust the jurisdiction of the courts.

DISTRICT COURT APPEAL.

Appellant in person.

Mohamed Harith Kassim (Assistant Director of Legal Aid) for the respondent.

Sinnathuray J. (delivering oral judgment): There is nothing in this appeal. All the facts were before the learned Magistrate. I have heard the appellant this morning. He gave me his income and his expenses. His statement confirms that the learned Magistrate was right when he ordered the maintenance order to be varied from $200 to $400 a month.

There is one other ground of appeal. It is that the learned Magistrate should have given effect to a clause in the Deed of Separation which clause provides that the respondent, wife, shall not at any time apply to the courts to vary the maintenance order. As was submitted by Mr. Kassim for the respondent that clause is bad in law because it is not within the province of the parties to contract out of the Women's Charter. It is also bad in law because such a clause would be contrary to public policy, for the parties to contract to oust the jurisdiction of the courts. So then, that ground also fails. For these reasons, the appeal must be dismissed.

Appeal dismissed.

TAN CHAI HENG v. YEO SENG CHOON

[O.C.J. (Choor Singh J.) September 30, 1980]
[Singapore — Motion in Originating Summons No. 239 of 1980]

Practice and Procedure — Appeal — Notice — Extension of time for filing — Solicitor's file mislaid.

Legal Profession — Failure to serve Notice of Appeal in time — Duty of solicitor to exercise reasonable diligence.

The Originating Summons was heard before the Honourable the Chief Justice on July 18, 1980 who dismissed it with costs. The last day for filing the Notice of Appeal was August 18, 1980. No Notice of Appeal was filed on that date. On August 29, 1980 an application was made to the court for extension of the time prescribed for filing the Notice of Appeal. The reason for the failure to file the Notice of Appeal in time was contained in the affidavit of the appellant's solicitor as follows:—

> "...The Notice of Appeal was prepared on the 18th day of July 1980. However the cause paper file pertaining to this matter was misplaced in my office library which was then undergoing renovations. Hence the said Notice of Appeal was not filed in Court. It was only on the 20th day of August 1980 in the afternoon after an exhaustive search that I discovered the file.
>
> Upon an inspection of the file, I noticed that the Notice of Appeal was not filed in Court. I immediately instructed my Clerk to file the same, but the same was rejected by the Registry of this Honourable Court as the last day for filing the Notice of Appeal expired on 18th August 1980."

Held: the facts disclosed in the affidavit showed gross negligence on the part of the appellant's solicitor and did not merit the exercise of judicial discretion in favour of the applicant.

Case referred to:

(1) *Ratnam* v. *Cumarasamy* [1965] 1 M.L.J. 228; [1964] 3 All E.R. 933.

MOTION.

Venu Gopal for the applicant.

Peter Tio Pee Tat for the respondent.

Choor Singh J.: This Originating Summons was heard before the Honourable the Chief Justice on July 18, 1980 when it was dismissed with costs. The last day for filing the notice of appeal was August 18, 1980. No notice of appeal was filed by that date.

On August 29, 1980 an application was made before me for an extension of the time prescribed for the filing of the notice of appeal. The reason for the failure to file the notice of appeal in time is stated in the affidavit of the appellant's solicitor filed in support of the application, as follows: —

> "...The Notice of Appeal was prepared on the 18th day of July 1980. However the cause paper file pertaining to this matter was misplaced in my office library which was then undergoing renovations. Hence the said Notice of Appeal was not filed in court. It was only on the 20th day of August 1980 in the afternoon after an exhaustive search that I discovered the file.
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> Upon an inspection of the file, I noticed that the Notice of Appeal was not filed in court. I immediately instructed my clerk to file the same, but the same was rejected by the Registry of this Honourable Court as the last day for filing the Notice of Appeal expired on 18th August 1980."

In my view the facts disclosed in the affidavit indicate that neither the solicitor nor his clerk used sufficient diligence to ensure the appeal being brought in time.

It was the duty of the solicitor for the applicant to exercise reasonable diligence to ensure that the notice of appeal was filed within the time prescribed for bringing the appeal even though the file was mislaid. If the file was mislaid, all that the solicitor had to do was to go to the Registry of the High Court, copy the heading of the case, prepare a notice of appeal and have it filed in the Registry. This was quite a simple thing to do, but no effort at all was made to do it. Instead, time was allowed to run and over a month passed before the file was found and then an attempt was made to file the notice of appeal.

There are numerous reported decisions, both here and in England dealing with the point in issue in this case. The cases show that the court has a discretion in the matter which must be exercised judicially after considering all the circumstances of the case. They also show that for an application to extend time to succeed there must be circumstances which warrant the exercise of the court's discretion in favour of the applicant. There is also a long line of cases which show further that a mistake or oversight on the part of the applicant's solicitor or on the part of the solicitor's clerk is not a sufficient ground for granting an extension of time to file a notice of appeal or a memorandum or petition of appeal. There is very strong support for this view in *Ratnam* v. *Cumarasamy*,[1] where Lord Guest in delivering the judgment of the Privy Council, observed at page 229:—

"The Rules of court must prima facie be obeyed, and in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material upon which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a timetable for the conduct of litigation."

In this case the only material before me was the affidavit of the appellant's solicitor. The ground there stated was that the solicitor's file was mislaid. That, as stated earlier, did not prevent the solicitor from filing a notice of appeal. In my judgment, the facts disclosed gross negligence on the part of the appellant's solicitor and did not merit the exercise of judicial discretion in favour of the applicant. The application was therefore dismissed.

Application dismissed.

Solicitors: *R.S. Balan & Co.; Cheo & Tio.*

COMPTROLLER OF PROPERTY TAX v. SHEEFA ALKAFF

[O.C.J. (Sinnathuray J.) January 7, 1981]
[Singapore — Originating Motion No. 26 of 1979]

Property Tax — Collection of — "Owner" — "For the time being" — Inclusion in the valuation list — Property Tax Act (Cap. 144), ss. 2, 18(2), 19 & 19A.

The respondent was the registered owner of No. 27 Third Avenue, Singapore. She purchased the said property from Great Wall Development Pte. Ltd. under a Contract dated December 4, 1975. Great Wall Development Pte. Ltd. were at the material time housing developers within the meaning of the Housing Developers (Licensing and Control) Act. Her purchase was completed on March 31, 1976. Before completion her solicitors sent the usual requisition to the Property Tax Department. The reply to this requisition dated November 12, 1975 had the following endorsement on it:—

"No. 27 Third Avenue, Singapore, has not been included in the Valuation List yet. Upon inclusion Notice under section 18(2) will be issued and tax will be recovered under section 19 of the Property Tax Act."

The Temporary Occupation Licence of the said property was issued on February 7, 1975 and Certificate of Fitness for Occupation was issued by the Chief Building Surveyor on November 27, 1975. Under the Contract the developers were required to pay all outgoings including property tax right up to the date of completion i.e. up to March 31, 1976.

The Comptroller sought to recover tax under section 19 of the Property Tax Act for the property as from February 7, 1975. The respondent did not dispute the fact that she was liable for all property tax as from the date of completion i.e. as from March 31, 1976. She however maintained that she was *not* liable for any property tax payable prior to March 31, 1976.

Held: (1) for tax to be a charge on property and for the owner to be liable for it, the property and the owner must be included in the Valuation List;

(2) the phrase "for the time being" applies only to limb (a) of the definition of "owner" in section 2 of the Property Tax Act where in each of the five cases a person is deemed to be "owner" of the premises when his name is in the Valuation List;

(3) the respondent's name was properly included in the 1976 Valuation List and therefore the respondent was liable to pay tax on the premises with effect from February 7, 1975.

Ong Poh Tan v. *Comptroller of Property Tax* distinguished.

Cases referred to:-

(1) *Haw Par International Ltd.* v. *Comptroller of Property Tax Singapore* — V.R.B. Appeal No. 682 of 1976 (unreported).

(2) *Ong Poh Tan* v. *Comptroller of Property Tax* [1977] 1 M.L.J. xliii.

(3) *Wankie Colliery Co.* v. *I.R.C.* [1922] 2 A.C. 51.

ORIGINATING MOTION.

Mrs. Lucy Hangchi (Legal Officer) for the appellant.

T.P.B. Menon for the respondent.

Cur. Adv. Vult.

Sinnathuray J.: In this appeal from a decision of the Valuation Review Board (the Board) the facts are not in dispute. The property, No. 27, Third Avenue, is a new two-storey detached bungalow built in 1974. The owner (the respondent) purchased it from the developers, a private limited company. Under the contract of sale and purchase dated December 4, 1975, the developers were required to pay all outgoings including property tax up to the date of com-